

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
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SPECIAL CIVIL APPLICATION No 726 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

DAKSHA HORTICULTURAL AND SANITATION SERVICE

Versus

UNION OF INDIA

Appearance:

MR RAMNANDAN SINGH for Petitioner
MR JD AJMERA for Respondents No. 1 & 2
No one appears for respondents Nos.3 and 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/08/97

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 10.12.96 passed by the Regional Provident Fund Commissioner, Baroda in the proceedings held under S.14B of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') against M/s. Daksha Horticultural & Sanitation Service, B-12, Satyanarayan Society, Gorwa, Vadodara, GJ/BD/15278 and the consequential notice dated

2.1.97 issued under S.8F of the Act by the Regional Provident Fund Commissioner, Baroda for recovery of a sum of Rs.1,07,206/-. Mr. Singh has submitted that a sum of Rs.42,902/- has already been recovered by the concerned authority. Besides this, it has been argued by Mr. Singh that while passing the order dated 10.12.96, which is impugned in this petition, the Regional Provident Fund Commissioner, Baroda has not taken into consideration the amendment, which was issued in 1991 and, therefore, the amounts, which have been shown to be due for any period after the amendment of 1991 became effective, deserve to be reconsidered and redetermined in the light of the aforesaid amendment for the period after the effective date of this amendment. Mr. Ajmera appearing on behalf of the respondents Nos.1 and 2 submits that the amount, which has been found to be due against the petitioner for any period after the effective date of the amendment of 1991, may be directed to be reconsidered and redetermined in the light of the aforesaid amendment and for this purpose, the matter may be remanded back to the concerned authority.

Mr. Singh for the petitioner has submitted that according to his calculations only a sum of Rs.1,78,32-78 Ps. was to be recovered.

It is not necessary for this court to enter into the exercise of determining the dues. There is no dispute with regard to the dues for the period prior to the effective date of the amendment of 1991 although Mr. Singh on behalf of the petitioner has submitted that the Company was closed for certain period. This fact is irrelevant for the purpose of determining the dues and, therefore, the amount, which has been found to be due for any period prior to the effective date of the amendment of 1991, does not require any interference by this court.

However, the matter is remanded back to the Regional Provident Fund Commissioner, Baroda for passing appropriate orders for the period after the effective date of the amendment of 1991 and for passing appropriate orders keeping in view the amendment of 1991 for the period after the effective date of the aforesaid amendment of 1991 and the concerned authority shall pass appropriate orders in this regard keeping in view the amendment of 1991 after hearing the petitioner and after noticing the fact as to how much amount has already been recovered and as to how much amount remains to be recovered. If the amount already recovered is found to be in excess of the total dues, the remaining part shall

be liable to be refunded to the petitioner and in case the total dues are found to be in excess of the amount, which has already been recovered, such excess amount shall be recoverable from the petitioner in accordance with law.

Mr. Singh on behalf of the petitioner has further raised the grievance that in terms of the order dated 7.2.97 passed by this Court in this case, the respondent - State Bank of India, IPCL Branch, Baroda has been restrained from permitting the petitioner to operate the Account and the respondent No.3 - Bank has been directed to retain an amount of Rs.65,000/- in the Bank. The request of Mr. Singh is that the petitioner may be allowed to operate and make use of the aforesaid amount and the restrain, which has been put for a sum of Rs.65,000/- over the State Bank of India, IPCL Branch, Baroda, may be lifted. Mr. Ajmera gives out that appropriate orders shall be passed by the Regional Provident Fund Commissioner in the remanded proceedings keeping in view the amendment of 1991 within a period of one month from the date the certified copy of this order is served upon the Regional Provident Fund Commissioner, Baroda. It is, therefore, ordered that should the Regional Provident Fund Commissioner fail to pass appropriate orders in accordance with law in the remanded proceedings within a period of one month from the date the certified copy of this order is served upon him, the restrain put on the State Bank of India, IPCL Branch, Baroda and the petitioner to operate the Account vide order dated 7.2.97 passed by this court shall cease to be effective. It is also made clear that in case the remanded proceedings are prolonged for any default on the part of the present petitioner, the restrain put by the order dated 7.2.97 shall continue until the final orders are passed by the Regional Provident Fund Commissioner, Baroda in the remanded proceedings.

In view of the order, as aforesaid, respondents No. 3 and 4 would not withhold the payment of dues to the petitioner only on the ground of the recovery of any amount under the impugned order dated 10.12.96 passed by the Regional Provident Fund Commissioner, Baroda.

The impugned order dated 10.12.96 passed by the Regional Provident Fund Commissioner, Baroda is partly set aside to the extent it relates to the period beyond the effective date of the amendment of 1991 and to that limited extent the impugned notice dated 2.1.97 is also set aside. This Special Civil Application is partly allowed with the directions and observations as above and

the Rule is also made absolute in the terms as aforesaid.
No order as to costs.

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